

**Filed 6/7/07 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2007 ND 74

In the Interest of L.J. and G.J., children

Robert Schock,

Petitioner and Appellee

v.

L.J. and G.J., Children,
T.S., Mother, S.J., Father, the
Children's Guardian ad Litem,
Hannah Balaban, and the Executive
Director of the N.D. Department
of Human Services,

Respondents

S.J., Father,

Respondent and Appellant

No. 20060376

Appeal from the Juvenile Court of Burleigh County, South Central Judicial
District, the Honorable Thomas J. Schneider, Judge.

AFFIRMED.

Per Curiam.

Tyrone J. Turner, Assistant State's Attorney, Courthouse, 514 E. Thayer Ave.,
Bismarck, ND 58501, for petitioner and appellee. Submitted on brief.

Kent M. Morrow, 411 N. 4th St., P.O. Box 2155, Bismarck, ND 58502-2155,
for respondent and appellant. Submitted on brief.

Interest of L.J. and G.J.

No. 20060376

Per Curiam.

[¶1] S.J., the father of G.J. and L.J., appeals from orders terminating his parental rights, denying his request to be present at the termination hearing, and denying his motion to dismiss the petition. The children’s mother, whose parental rights were also terminated, did not appeal. S.J. was incarcerated when the State petitioned to terminate his parental rights. G.J. and L.J. had been in foster care for 673 consecutive days on the date of the termination of parental rights hearing. S.J. was not present at the termination hearing, but he was represented by counsel.

[¶2] On appeal, S.J. argues there was insufficient evidence to support the court’s findings of fact that the children were deprived, and the court erred in terminating S.J.’s parental rights based on the number of days the children had been in foster care. S.J. conceded the children were deprived because he could not presently care for them while he was incarcerated. We have said: “Under [N.D.C.C. § 27-20-44(1)(b)(2)], a court may terminate parental rights solely on a finding of (1) deprivation and (2) that ‘[t]he child has been in foster care . . . for at least four hundred fifty out of the previous six hundred sixty nights.’” Interest of F.F., 2006 ND 47, ¶ 14, 711 N.W.2d 144. The juvenile court’s findings under N.D.C.C. § 27-20-44(1)(b)(2) were not clearly erroneous. We summarily affirm under N.D.R.App.P. 35.1(a)(2) and (7).

[¶3] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Mary Muehlen Maring
Daniel J. Crothers
Dale V. Sandstrom